IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 3RD AUGUST 2007 / 12TH SRAVANA 1929

RCRev..No. 256 of 2007(D)

RCA.37/2005 OF THE COURT OF THE DISTRICT JUDGE OF KOLLAM
RCOP.57/2000 OF RENT CONTROL COURT, KOLLAM

REVISION PETITIONER/1ST APPELLANT/1ST CR.PETITIONER:

A. ISMAIL KUNJU,
RESIDING AT SHAJAHAN MANZIL, MEENATHU CHERRY,
SAKTHIKULANGARA, KOLLAM.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.JIBU P THOMAS

RESPONDENTS: RESPONDENT & 2ND APPELLANT/PETITIONER & 2ND CR.PETITIONER:
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1. G. NALINI, W/O.K.BALAKRISHNAN,
RESIDING AT BALARAM BUILDINGS, KAIKULANGARA,KOLLAM

2. ABDUL FAIZAL,
SHOP NO.SP-94, KINGS BAKERY, KAVANADU, KOLLAM.

BY ADV. SRI.B.MOHANLAL FOR CAVEATOR

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 03/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR & K.T.SANKARAN,JJ.

R.C.R. NO. 256 OF 2007

Dated this the 3rd August, 2007

O R D E R

SANKARAN, J.

The first counter petitioner in R.C.P.No.57 of 2000, on the file of the Rent Control Court, Kollam, is the revision petitioner. The first respondent in this revision filed the Rent Control Petition against the revision petitioner and the second respondent. The parties are referred to hereunder as they are arraigned in the Rent Control Petition.

2. The Rent Control Petition was filed under Sections 11(2)(b), 11(4)(i) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as `the Act'). The petition schedule building consists of two rooms which are numbered as SP 94 and SP 95. The building was let out to the first respondent as per Ext.A1 lease deed, dated 10.11.1990, on a monthly rent of Rs.150/-. The petitioner contended that room No.SP 94 was sublet by the first respondent to the second respondent and the second respondent is running a business therein, under the name and style “Kings Bakery”. The petitioner also contended that the first respondent has other buildings in his possession and therefore, the petitioner is entitled to get an order of eviction under Section 11(4)(iii) of the Act.

3. The Rent Control Court found that the petitioner is entitled to an order of eviction under Section 11(2)(b) of the Act as the tenant has kept the rent in arrears. This finding was not challenged by the tenant in appeal and, therefore, it has become final. The Rent Control Court found on evidence that the first respondent has sublet room No.SP 94 to the second respondent, who is his son-in-law and that the petitioner is entitled to an order of eviction under Section 11(4)(i) of the Act. The Rent Control Court rejected the ground under Section 11(4)(iii) of the Act. Respondents in the Rent Control Petition filed R.C.A.No.37 of 2005, on the file of the District Court, Kollam, challenging the findings rendered by the Rent Control Court against them. The landlord, namely, the petitioner in the Rent control Petition, filed a Memorandum of Cross Objection, challenging the finding of the Rent Control Court under Section 11(4)(iii) of the Act.

4. As regards subletting, the case of the landlord is that, without authorisation in the lease deed and without the consent of the landlord, the first respondent/tenant has sublet a portion of the tenanted premises (SP 94) to the second respondent and that the second respondent is running “Kings Bakery” therein. The tenant has denied the sublease. To prove that there was subletting, the landlord relied on the evidence of Pws.1, 3 and 4, who are respectively the power of attorney holder of the landlord, the Health Inspector and the Assistant Engineer of the Kerala State Electricity Board. PW3, the Health Inspector, produced records to show that Ext.X1

licence was granted in favour of the second respondent to run a bakery in room No.SP 94. PW4, the Assistant Engineer of the Kerala State Electricity Board, had produced Ext.X6 document. Ext.X6 would prove that electricity connections in respect of the two rooms in question are separate and distinct. It is admitted by the tenant, who was examined as RW1, that two electricity meters were installed in the premises and that those two electricity meters were in respect of the two rooms, namely, SP 94 and SP 95. It is the admitted case that the licence in respect of Kings Bakery, run in SP 94, stands in the name of the second respondent. Though the first respondent stated in evidence originally that the licence stood in the name of the second respondent, he denied his own previous statement in evidence before Court and stated that he had not made any such statement before Court earlier that the licence stood in the name of the second respondent. The first respondent also stated in evidence that the second respondent took out the licence in his name without the knowledge of the first respondent and contrary to the specific instructions to the second respondent to take out the licence in the name of the first respondent. The court below adverted to this aspect and held that the first respondent had not taken any steps against the second respondent or approached any authority to see that the licence in favour of the second respondent is cancelled. The licence continues to be in the name of the second respondent.

5. The Commissioner appointed by the trial court could not inspect the premises since on two occasions when he attempted to inspect the premises, the building was seen locked. This would show that the conduct of the respondents was such as not to assist the Court but to cause hindrance to the proceedings of the Commissioner appointed by the Court.

6. The courts below noticed that the tenant, namely, the first respondent does not know anything about the bakery business in room No.SP 94. Though the first respondent stated that he is in possession of the records in respect of the business run in room No.SP 94, he has not produced the same either before the Rent Control Court or before the Appellate Authority. The courts below considered the oral and documentary evidence on record and came to the conclusion that the first respondent has sublet room No.SP 94 to the second respondent. It was also noticed by the courts below that the jural relationship between the first respondent and second respondent is to be proved by them and not by the landlord. It was held by the courts below that the landlord was successful in establishing that there was a transfer of possession by the first respondent to the second respondent in respect of room No.SP 94.

7. Learned counsel appearing for the petitioner submits that the findings of the authorities below on the question of sublease is perverse, illegal and improper. He cited the decisions reported in **Janab M.P.Azad**

v, **Fatima Sarohimi Suresh and others** (1983(1) RCJ 249); **Jayakrishnan** v. **Vrindha** (1997 (2) KLT 943); (**Smt.Krishnawati** v. **Shri Hans Raj** (1974 (1) SCC 289) and **Devayani** v. **Pulickaparambil Hamsa Haji** (1997 (1) KLJ 230).

8. We have carefully considered the submissions made by the learned counsel for the petitioner with reference to the decisions mentioned above. We are of the view that on the facts of this case, the petitioner is not entitled to rely on these decisions as the factual situation available and considered in those decisions are entirely different from the factual situation in the present case.

9. We are of the view that the Appellate Authority has considered the facts in the light of the decisions referred to in the judgment of the Appellate Authority and has rightly arrived at the conclusion that there was an objectionable sublease within the meaning of Section 11(4)(i) of the Act.

10. As regards Section 11(4)(iii) of the Act, the Rent Control Court held that the ground is not established. There was no proper discussion of facts and materials by the Rent Control Court. The Appellate Authority noticed that the Rent Control Court did not properly consider the case with reference to the facts proved in the case. The case of the petitioner in this regard is that the tenant has in his possession other buildings so as to

attract Section 11(4)(iii) of the Act. PW5, the Superintendent of Zonal Office, Sakthikulangara proved Ext.X7 series of assessment registers for the period from 1993 to 2005. Ext.X7 proves that shop room Nos.351 to 355 stood in the name of first respondent. As regards room Nos.354 and 355, on a perusal of Ext.X7, the Appellate Authority came to the conclusion that those rooms are lying vacant. The Appellate Authority noticed that the evidence of RW1 cannot be relied on at all and that he has no regard for truth. The specific averment in the Rent Control Petition is that the first respondent was in possession of other rooms. In the objections, the first respondent stated that though he had rooms, they are in the possession of his sons and they are running business therein. First respondent also stated that the sole livelihood of his sons is the income derived from the business conducted therein. But at the time of tendering evidence as RW1, the first respondent stated what he stated in the objection was wrong and that he has no rooms at all in his possession and ownership. The Appellate Authority took note of this and held that RW1 cannot be believed at all. It has come out in evidence that the second respondent is running tailoring business in the up-stair portion of the petition schedule building and this is admitted by RW1 originally in his evidence. But in the later part of his evidence, he even denied this. On the basis of the materials produced in the case and taking into account the oral and documentary evidence, the Appellate Authority came to the conclusion that there are rooms available in the possession of the first respondent and therefore, Section 11(4)(iii) is

attracted. The first respondent has not discharged the burden of proof cast on him, as rightly held by the Appellate Authority.

11. Learned counsel for the revision petitioner submitted that the scope of Section 20 of the Act is wider than Section 115 of the Code of Civil Procedure and that this Court should interfere with the findings of the authorities below when it is found that the decisions are illegal, improper or irregular. It is true, as held by the Supreme Court in **Koyilerian Janaki and others** v. **Rent Controller (Munsiff), Cannanore and others** [(2000) 9 SCC 406] and **Sainuddin** v. **Sulaiman** (2002 (3) KLT 224), that the scope of Section 20 of the Kerala Buildings (Lease and Rent Control) Act, 1965 is wider than Section 115 of the Code of Civil Procedure. Under Section 20 of the Act, the revisional court has to examine the legality, regularity and propriety of the proceedings and orders passed by the Rent Control Court and the Appellate Authority. On going through the order and judgment of the authorities below and after hearing the counsel for the petitioner, we are of the view that no grounds for interference under Section 20 of the Act are made out. It cannot be said that the judgment of the Appellate Authority is perverse or that there is illegality, irregularity or impropriety in the judgment and proceedings. The Revision lacks merits and it is accordingly, dismissed.

12. Learned counsel for the revision petitioner- tenant submits that

the revision petitioner may be granted a reasonable time to vacate the premises. We heard the landlord, who had filed a caveat in the case. Taking into account the facts and circumstances of the case, we are inclined to grant six months' time to the revision petitioner to vacate the premises on condition that the revision petitioner as well as the second respondent shall file separate affidavits before the Rent Control Court within a period of three weeks from today undertaking to vacate the premises within the aforesaid period of six months. The revision petitioner shall also pay the arrears of rent within one month and shall continue to pay the rent on due dates till he vacates the premises.

(K.BALAKRISHNAN NAIR)
Judge

(K.T.SANKARAN)
Judge

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